

EXHIBIT A

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 * * * * *

4 DIANE DENMARK *
Plaintiff *

5 VERSUS * CA-04-12261-DPW

6 LIBERTY MUTUAL ASSURANCE *
7 COMPANY OF BOSTON, ET AL *
Defendants *

8 * * * * *

9 BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

10 UNITED STATES DISTRICT COURT JUDGE

11 HEARING

12 APRIL 4, 2005

13 APPEARANCES:

14 JONATHAN M. FIEGENBAUM, ESQ., Phillips & Angley,
15 One Bowdoin Square, Boston, Massachusetts 02114,
on behalf of the Plaintiff

16 ANDREW C. PICKETT, ESQ. AND RICHARD W. PATERNITI,
17 ESQ., Jackson, Lewis, LLP, 75 Park Plaza, Boston,
Massachusetts 02116, on behalf of the Defendants

18
19 Courtroom No. 1 - 3rd Floor
20 1 Courthouse Way
21 Boston, Massachusetts 02210
3:20 P.M. - 3:40 P.M.

22 Pamela R. Owens - Official Court Reporter
23 John Joseph Moakley District Courthouse
24 1 Courthouse Way - Suite 3200
Boston, Massachusetts 02210

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1 CA-04-12261-DPW

2 APRIL 4, 2005

3 THE CLERK: Could counsel please identify
4 themselves?

5 MR. FIEGENBAUM: John Fiegenbaum, Your Honor,
6 for the plaintiff, Diane Denmark.

7 MR. PICKETT: Andrew Pickett for Liberty
8 Mutual. And also with me is Richard Paterniti.

9 THE COURT: Well, Mr. Pickett, I take it
10 that you will be able to respond to this discovery
11 forthwith?

12 MR. PICKETT: Excuse me, Your Honor?

13 THE COURT: You can respond to the discovery
14 forthwith?

15 MR. PICKETT: To the extent the Court orders
16 it, Your Honor. We would like to address the issue of
17 the breadth of what he's asked for and we do have a
18 compromise position on it.

19 THE COURT: Okay. Well, let me hear you on
20 that.

21 MR. PICKETT: Okay. Your Honor, from our
22 perspective, this is a straightforward case for denial
23 of long-term disability benefits and this is pursuant to
24 a long-term disability plan offered to the plaintiff.

25 THE COURT: Yes. I think I understand that.

1 The issue for me is how properly to structure a record
2 for dealing with this. I'll put it a little bit
3 differently. I suspect that I will go off on an
4 arbitrary and capricious standard. I suspect that I
5 won't be using a de novo standard. I want to get to it
6 promptly. I have a schedule in place. If the plaintiff
7 wants to raise these issues, she can raise it in any
8 motion practice, dispositive motion practice. But I
9 think I'm inclined -- and particularly in light of some
10 of the -- I won't call them arbitrary and capricious,
11 but cases out there that seem to permit a little bit of
12 discovery to let her have that discovery and let the
13 motion hearing go off with the benefit of that
14 discovery.

15 MR. PICKETT: Well, maybe if I could very
16 briefly address that, Your Honor. Obviously, our
17 initial position -- as argued in our brief and I will
18 not bore Your Honor with it -- is that in an arbitrary
19 and capricious standard review case, the real relevant
20 material are the claims materials that were submitted
21 and the medical records. And obviously, theoretically,
22 plaintiffs can and do make the argument they want to try
23 and discover financial conflicts of interest, we want to
24 see how the claims examiners were trained, we want to
25 see how their doctors evaluate things. And all I would

1 the time period run from 2001 through 2003, large enough
2 so that we're not just focusing on performance that year
3 and large enough to have the particular performance.
4 But within it, it will demonstrate what the nature of
5 the relationship was during that year.

6 MR. FIEGENBAUM: The other matter is I thought
7 we were going to actually argue today on the motion I
8 filed on scienter review.

9 THE COURT: I have told you what I'm going to
10 do more or less, but I'm not doing that until I see the
11 actual motions for summary judgment.

12 MR. FIEGENBAUM: Okay.

13 THE COURT: I would say it's a 95 chance that
14 this is going to be an arbitrary and capricious review.
15 But I'm not going to lock myself into that until I've
16 had a chance to see the full argument on summary
17 judgment which, by the way, is not going to be delayed.
18 That schedule stays in place. They will turn over the
19 materials called for here within 21 days, no later than
20 21 days from today.

21 MR. FIEGENBAUM: Thank you.

22 THE COURT: Okay. So, the way in which I'm
23 dealing with this is I've allowed the motion for
24 discovery relating to number (14) relating to scope of
25 the administrative record as I've indicated. And to the